

In the matter of St Wilfrid, Grappenhall

In the matter of a Petition by John and Annette Boardman for the reservation of a grave space

JUDGMENT

1. Mr and Mrs Boardman are aged 70 and 69 respectively. They have a heartfelt wish to be buried in due course in the churchyard of St Wilfrid, Grappenhall.
2. By a petition dated 16th July 2014 they seek a faculty to reserve (for 30 years) a, yet to be identified, plot in which their remains may (in full burial) be interred when that time comes.
3. Public notice of the petition, which was displayed between 14th September 2014 and 12th October 2014, produced no objection.
4. The petition is, however, not consented to by the Rector or Churchwardens or by the Parochial Church Council (PCC).
5. The parish has not sought formally to become a party opponent.
6. The petitioners were (entirely reasonably) content for the matter to be determined without a hearing and upon written representations.
7. The essential reasoning of the parish was explained in a letter of the 18th October 2014 from the Rector, the Revd. Jane Proudfoot: "The question of this petition was discussed at the PCC meeting on October 6th, 2014. The meeting was sympathetic to the desire of Mr and Mrs Boardman to be buried in the churchyard at St Wilfrid's and was entirely sure that when the time comes they will be fully entitled to so be. However, concern that a precedent might be established which could lead to other petitions and a tying up of church ground has led the PCC to pass a resolution with regard to burials and adopt a Churchyard Policy, a copy of which is attached".
8. That policy, so far as is relevant, provided: "Priority for burials will be given to people who meet the following criteria; those who live in the ecclesiastical parish of Grappenhall; those who are regular worshippers and on the electoral roll; those who have strong links with the parish church (at the discretion of the incumbent). It is not the policy of the PCC to permit the reservation of grave spaces".
9. The PCC Minute, which I have considered, appeared to be entirely properly alive to the relevant legal considerations and to the petitioners' right to invite my decision, which they have now done. I could detect no *ad hominem* motivation whatsoever in the decision by the PCC to adopt a policy, though without doubt that step was taken as a direct response to reflection upon the Boardmans' perfectly proper request.
10. The PCC in discussion had evidently proceeded upon the basis that there would be available graves for the next '20/30 years'.
11. The Rector amplified the position a little further in an e mail of 5th February 2015 to the Registrar (in response to certain matters I had queried). "There was more discussion at the

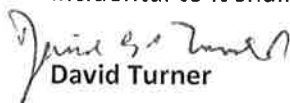
- PCC than the Minutes imply. Members were disquieted by the idea that burial spaces should be reserved in the churchyard as this might set a precedent. They were worried that if people who don't attend the church were allowed to reserve their space, others who do attend might begin to do so too and we could end up with all the remaining plots being reserved. There was absolutely no objection to Mr and Mrs Boardman being buried in the churchyard and their entitlement to be so was fully understood and supported by the PCC. However it was felt that they, along with everyone else in the parish or on the electoral roll, should 'wait and see' rather than trying to guarantee their place. It was felt that Mr and Mrs Boardman had no more special reason for wanting to be buried in the churchyard than anyone else".
12. The Rector, in the same e mail, set out some simple burial statistics covering the period between 1990-2014. New burials averaged 5 per year. Upon that basis, and upon her estimate that land remained for 120 new burials, she judged that available space would run out in approximately 25 years time.
 13. The petitioners question this. Mr Boardman has recently visited the churchyard and estimated that only some 450 square metres apparently remain available. Further, he considers the parish has not taken sufficient account of the burial (in increasing instances) of cremated remains. He has forward two helpful photographs of the churchyard which I have considered.
 14. The matter having been raised by Mr and Mrs Boardman, I had also invited comment upon the parish's future plans, if any, once the churchyard was full. The Rector confirmed no more land was available to purchase in order to extend the churchyard. She explained that the PCC had not discussed the possibility of re-use. It was her opinion, and that of the Churchwardens, that re-use may be undesirable. The church is Grade 1 listed and in a conservation area. The oldest part of the churchyard is to the front, near the highway, and has, she explained, 'an historic, well-recognised and documented aspect'. She anticipated there may be 'strenuous' local and congregational objection to the re-use of existing graves in this area.
 15. The petitioners' request for reservation, on any view, is prima facie reasonable and has been advanced with courtesy and moderation. There is, nevertheless, discernible in their correspondence unmistakable strength of feeling and emotion as they speak candidly of being 'really desperate to ensure our last resting place'. They feel reservation now will afford them, and their family, a welcome element of peace of mind.
 16. Though not themselves on the electoral roll or (as I understand it) actively involved in church life as regular attenders, their local ties are nevertheless strong.
 17. They have lived in the parish for their entire married life, now some 46 years. They regard, they explain, the church as 'central to our village and our lives'. Their home overlooks the churchyard. Their daughters have been baptised in the church and one later married there. Two of their grandchildren have been baptised in the church. They have been actively involved in various aspects of local and community life for a long time. Mrs Boardman's father's remains are there and the hope is that her mother's may similarly be placed when the time comes. Other local friends and neighbours are already buried there.
 18. The petitioners have, for some time, had their 'hearts set' on being buried in the churchyard and have viewed with increasing anxiety the rate at which space is apparently going. They question the optimism of the Rector about remaining space. Their own view is that 10 years

- remaining may represent a more realistic expectation. They are (gently) critical of the apparent lack of future planning by the PCC for the time the churchyard becomes full.
19. They thus feel real concern that the churchyard may, when their time comes, be unable to accommodate their remains.
 20. It is necessary to say something about the law which applies.
 21. Whether it is desirable or appropriate to reserve grave spaces generally is a matter upon which views, including the views of Chancellors, differ. For example, in **Re West Pennard Churchyard 1992 1WLR 32**, Newsom Ch. considered that where plenty of room remains available and persons have the legal right to burial, a faculty will be 'freely granted'. My predecessor in this diocese, Lomas Ch., however, questioned that broad approach in **Re St Mary, Dodleston Churchyard 1996 1 WLR 451**. He considered decisions depended upon careful appraisal of all the relevant circumstances and may be contingent upon numerous possibilities.
 22. Those in favour of allowing reservation reason that it gives proper and appropriate assurance and comfort to those seeking to make sensible provision for their life's end; that it often facilitates a grave near to or alongside other family members; that it often reinforces the sense of a person's commitment to a church, a community or a locality; that it gives expression to legitimate family feeling and a sense of history.
 23. Those who resist such reservations point to the real risk that it may prevent other parishioners, who die before those benefitting from the reservation, from being buried in the churchyard and, thus, detract from the principle of equality as between the departed; it may create local tensions and upset; it may prejudice the rights of parishioners, even where it has been sensitively exercised; it may mean that even though space 'remains', visibly, in the churchyard, burial of those otherwise entitled cannot be accommodated, with consequent upset and misunderstanding.
 24. Case law has frequently had to grapple with where the balance in these competing interests is properly to be struck.
 25. The legal principles are well established.
 26. At common law, every parishioner has a right to burial in the churchyard of the parish unless it is closed by due legal process.
 27. The common law right extends also to all persons dying in the parish, whether or not they are parishioners.
 28. By statute a similar right is enjoyed by all persons whose names are on the electoral roll of the parish (see Church of England (Miscellaneous Provisions) Measure 1976, s.6(1)).
 29. The Incumbent has power at common law to prescribe in what position in the churchyard any burial is to take place; but that is the extent of his/her power in respect of cases where the deceased has a legal right of burial.
 30. As freeholder of the churchyard, the Incumbent is also entitled to grant consent to the burial in the churchyard of remains of a person who has no legal right of burial; in doing so he/she is to that extent ousting those who have existing prospective rights. In deciding whether to give consent in such a case, he/she is therefore required by statute to 'have regard to any general guidance given by the PCC with respect to the matter': see s.6(2) of the 1976 measure.
 31. These common law and statutory rights crystallise only when the person in question dies.
 32. The court has a discretion whether to allow or refuse a petition to reserve a grave space.

33. Generally, that discretion is likely to be exercised in favour of reservation particularly where the faculty is sought by those with a right to burial in the churchyard. This, however, is with the proviso that it can properly be said that there is no substantial risk to the rights of other parishioners.
34. Where pressure on space is acute it therefore follows that the court is unlikely to grant reservation so as to prejudice future burials.
35. In those circumstances, individuals with a legal right of burial must, generally, be interred in the order in which they die until such time as the churchyard is full.
36. Neither regular attendance, active participation in the church's ministry nor generosity to its endeavour can give rise to any presumptive priority for a certain class of individuals when the number of available burial plots has become so few.
37. The position may be strengthened if, for example, one or more of a petitioner's relatives are buried nearby; it may be weakened if the churchyard is on the point of being full.
38. In the present case, I readily recognise there may be room for debate as to when (in the future) the churchyard may be full. Determination of such an issue can prove problematic for the court as the judgment in **Re Brightlingsea Churchyard [2005] 8 Ecc LJ 233** (Pulman Ch.) makes plain.
39. Further important considerations arise where, as here, the PCC has adopted a policy of resisting the reservation of grave spaces.
40. The matter has required consideration by other Chancellors before the present. (See **Re Dilhorne Churchyard [2001] 6 Ecc LJ 77** (Coates Dep Ch.); **St Leonard, Blithfield (unreported; 16th October 2014; Eyre Ch.)**).
41. In **Dilhorne** the Deputy Chancellor, as he then was, in refusing a petition, emphasised that the PCC of any given parish was likely to be well placed to know the needs and desires of parishioners and the circumstances of the churchyard (and by implication markedly better placed than the Chancellor to know such matters). He considered that the court should not readily ignore the reasonable, bona fide and proper exercise of a PCC's discretion upon such a matter. He had in that case considered (and rejected) a suggestion that the policy had been adopted merely to thwart a particular reservation.
42. In **Blithfield**, Eyre Ch. agreed with this approach. He said: " As Coates Dep Ch. indicated, any given PCC is likely to have a better understanding of local needs and wishes than the court will have. It follows that where such a policy has been adopted by a PCC the court should take account of it and give it considerable weight in the exercise of the court's discretion. Such a policy cannot be conclusive and cannot remove the court's discretion. Moreover, if the policy were shown to have been the result of an illegitimate hostility to a particular person or to have been based on a misunderstanding of the appropriate provisions then it would have no weight. Even a legitimate policy cannot be conclusive because there will always be the possibility of particular (and potentially unforeseen) circumstances which will justify an exception. However, in my judgment, it will only be where there are exceptional circumstances that the court will be justified in departing from the policy adopted by a PCC. Anyone seeking to reserve a grave space in the face of such a policy will need to show that their case is markedly out of the ordinary. The need for exceptional circumstances flows not just from the respect the court should give to the views of the PCC but is also a matter of fairness. Where such a policy has been adopted by a PCC there are likely to have been a number of people who have accepted that a grave space cannot be reserved even though

their preference would have been for a reservation. Fairness to those who have subordinated their own preferences to the decision of the elected Council requires that the court should only allow reservations in exceptional cases. Failure to do so would run the risk of those who are forceful and articulate being able to circumvent rules which others have followed."

43. I readily recognise that that last point is (as yet) of no immediate application to the present case.
44. Similarly, in **Blithfield**, the policy in question had been in place since the 1970s, a rather different position to Grappenhall where the policy which came into being arose as part of the very PCC debate upon the Boardmans' request itself.
45. I have already set out my clear impression that the policy, however, was not to be regarded as any sort of judgment upon them or their request, concerning which, as the Rector explained, the PCC was 'sympathetic'. I do not for a moment believe the petitioners were being singled out for any sort of adverse treatment.
46. The Boardmans have sought, I accept, to be discreet about their application. They suggest, too, that the 'precedent' danger has been somewhat overestimated by the parish. They state that they 'know of nobody else in the parish who wants to reserve a grave space'. I do not share their optimism on that front. I find the PCC concern rather more persuasive.
47. I consider the broad approach taken in the two cases I have discussed above to be the correct one.
48. I consider the adoption of a (non-reservation) policy reasonable. It was and is open to the PCC to take account of local conditions.
49. I see nothing sinister in the policy or its timing. I suspect it has taken a proper (and on its face, meritorious) application, such as Mr and Mrs Boardman have made, to trigger a possibly overdue debate about the future of the churchyard. There may well be more to be said concerning both land acquisition and re-use. Those are not however matters for me at this stage.
50. I have much sympathy for Mr and Mrs Boardman's request. I know my decision will come as a considerable disappointment to them. I hope they may understand and accept it.
51. I have anxiously struggled to discern in their request, and in its plainly heartfelt expression, sufficient 'out of the ordinary' elements necessary to enable me, in effect, to 'over-ride' the considered views of the elected body and officers charged with the churchyard's longer term future, not to mention risking real injustice to those other local people who may pre-deceased the petitioners. I regret that I have been unable to do so. Their 'need to know', however strongly felt cannot suffice.
52. Like the Rector, I feel confident Grappenhall will indeed ultimately prove to be the earthly resting place for the petitioners' remains. It is a real regret to me that I cannot, in the exercise of my judicial discretion, prioritize their present wish over and against what the PCC has determined, by granting the petition.
53. It follows that for the reasons I have given, this petition must be dismissed. The costs of and incidental to it shall (in the usual way) be paid by the petitioners.


David Turner

18th February 2015

His Honour Judge David Turner QC Chancellor of the Diocese of Chester